IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:26113 of 2003

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Dated:23-12- 2005.

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Between:

Dr. J.Balakrishna Rao

..... PETITIONER

AND

State of Andhra Pradesh, represented by its Secretary, Health, Medical and Family Welfare Department and others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.26113 of 2003

&

C.C.No.501 of 2004

JUDGMENT : (per JC,J)

Medical colleges were being run both by State and private managements in the State of Andhra Pradesh for quite some time. The policy of the State in the matter of allowing private managements to run medical colleges kept on changing from time to time. The medical colleges run in private sector in 1950's and 1960's known as Ranga Raya Medical College, Kakinada and Kakatiya Medical College, Warangal were taken over by the State, the details of which insofar as they are relevant will be examined later. Subsequently, another private management was permitted to start a medical college called `Siddhartha Medical College at Vijayawada.

As a matter of history, it can be recorded that only the private educational institutions, more particularly, medical colleges run by private managements used to collect substantial amounts towards capitation in consideration of granting admission to students in the medical colleges. In the year 1983, there was a major shift in the policy of the State thought it fit to prohibit the collection of capitation fee in the educational institutions which was considered to be an undesirable practice long before the celebrated **Unnikrishnan's case** and enacted Act 5 of 1983. We can only conjecture that as a consequence the Siddhartha Academy of General and Technical Education which was the `educational agency' running the Siddhartha Medical College at Vijayawada apart from certain other educational institutions, it appears agreed to hand over to the government, the buildings and other facilities of the medical college. What reasons prompted the private management to take such a decision and what reasons prompted the State to accept ***"such a gift"*** to the government are not clear from the record except a letter dated 7.10.1986 issued by the Secretary to Government, Health, Medical and Family Welfare Department,

Hyderabad, which is placed on record by the learned Advocate General. The relevant portion of the letter reads :

> "I am directed to invite your attention to the letters cited and to state that the Siddhartha Academy of General & Technical Education has agreed to hadover to the Government, the buildings and other facilities, such as equipment etc., then available for the medical colleges after completion of the construction of the college without claiming any compensation The Government had also reiterated that the Academy handover all the facilities created including the amounts standing to the credit of the Medical College Education Fund to Government free of cost without claiming any compensation.
>
> The Government have examined very carefully your request for the reimbursement of the overspent amount and also the rental charges for the accommodation, and consider that there is little justification in your claim for compensation now.
>
> I am therefore, directed to request you to honour the commitment made by the Academy and handover possession of the buildings and other facilities such as equipment etc., direct to the University of Health Sciences without claiming any compensation, as and when the said University commences to function."

The said letter refers to three earlier letters of the management dated 5.9.1983, 16.4.1986 and 30.7.1986. Apparently, some correspondence between the State and the private management took place in the preceding three years after coming into force of Act 5 of 1983.

It is relevant to mention here that Section 60 of the Andhra Pradesh Education Act, 1982 (Act 1 of 1982) provides for the taking over of management of educational institutions in public interest. Under the scheme of the said Section 60, the government is authorized to take over the management of any educational institution `either in the public interest or in order to secure the proper management by a

notification and with effect from the dates specified in the notification, the management of such acquired institution vests in the government.' Further on such taking over all the assets, rights, properties also vest in the State. Obviously, such assets include the rights arising under contracts entered into between the private management and the employees. Therefore, the Legislature made it clear under section 61, that the government is entitled to terminate any such contract if in the opinion of the government such a contract is unduly onerous.

Notwithstanding the availability of such power under Act 1 of 1982, the State of Andhra Pradesh did not however exercise the said power, but agreed to take over Siddhartha Medical College by a private negotiation virtually a ***"gift"*** to the State.

When the negotiations for such ***"gift"*** were in progress, the State of Andhra Pradesh enacted the NTR University of Health Sciences Act, 1986. The Act came into force on 13.10.1986. The broad scheme of the Act is that the medical education in the State of Andhra Pradesh is sought to be brought under the control of the newly formed University. The various medical colleges existing as on that date were affiliated to the various Universities in the State. Section 8 of the Act makes a categoric declaration to the effect that the colleges and institutions specified in the First Schedule shall on and from the appointed date be disaffiliated from the said universities and thereupon they shall be deemed to have been affiliated to the newly formed university.

In view of the above mentioned new enactment and the scheme as indicated above, the government thought it fit to direct Siddhartha Academy of General and Technical Education (the educational agency running Siddhartha Medical College) to handover the medical college directly to the new university. Apparently, such a direction was given in a government letter No.1786/E1/84-6, dated 7.10.1986 which is referred to in a subsequent communication from the Secretary to Government, Health, Medical and Family Welfare to the Officer on Special Duty, In-charge of the newly formed university affairs dated 27.10.1986. The letter reads :

"Government of Andhra Pradesh

Health,Medical & Family Welfare Department

Letter No.1786/E1/86-1, Dated : 27.10.86.

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From

The Secretary to Government,

Health, Medical & Family Welfare Department,

Hyderabad.

To

Dr.P.Mahapathra, I.A.S.,

Officer-on-Special Duty,

H.No.54-16-822, Shree Siddhartha Nagar,

Opp. Layola East Stadium,

Vijayawada.

Sir,

Sub : Medical Education – Siddhartha Medical College, Vijayawada – Take over of the Siddhartha Medical College, Vijayawada –Reg.

Ref : Govt.Lr. No.1786/E1/84-6, dt. 7.10.1986.

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In the reference cited the Government has requested the Secretary of the Siddhartha Academy of General & Technical Education, Vijayawada to hand over the Siddhartha Medical College directly to the University of Health Sciences without claiming any compensation when the said University commences to function. The said communication was acknowledged on 9.10.1986 by the Academy.

As per the decision of the Government, the take over of the Siddhartha Medical College has to synchronize with the establishment f the University of Health Sciences. The University of Health Sciences is coming into force with effect from 1.11.1986. As such Siddhartha Medical College has to be taken over by the said date.

> I am therefore directed to request you to take appropriate action for the take over of the Siddhartha Medical College, Vijayawada so as to synchronise with the establishment of the University of Health Sciences.
>
> Yours faithfully,
>
> Sd/-
>
> For Secretary to Government"

Admittedly, the private management complied with the direction. While handing over of Siddhartha Medical College, the private management by a resolution [communicated to the University] requested for certain commitments. One of them being that the entire staff of the college and hospitals as on the day of the takeover be taken into service of the government or the university. The private management also requested that the past services of such staff should also be taken into consideration for the purpose of seniority, promotion, increments, pension etc. The University responded by a resolution saying that "50% of the service put in by each staff of the medical college will be counted for all purposes like seniority, promotions, periodical increments, pension etc., in future. This is on the basis of the precedent of Ranga Raya Medical College, Kakinada, Kakatiya Medical College, Warangal …". Considering the request of the management, the Executive Council of the University passed a resolution insofar as it pertains to the staff of the medical college to the effect that they would be absorbed by the University. Such a decision of the University was communicated to the private management by a letter dated 3.1.1987 by the Officer-on-Special Duty referred to earlier.

The pathetic state of affairs in the present case is that the original petitioner one Dr.J.Bala Krishna Rao, who joined Siddhartha Medical College initially as a tutor on 29.12.1984 and retired as a tutor on 31.10.2000 died during the pendency of the present writ petition. The litigation is continued by his legal representatives. It is averred in the affidavit filed in support of the present writ petition as follows :

> "…By a Resolution of the Executive Council the Teaching and Non-teaching staff working in Siddhartha Medical College were absorbed into

> the services of the A.P. University of Health Sciences w.e.f., 21.12.1986. After appropriate passing of the teaching and non-teaching staff of Siddhartha Medical College were absorbed into the University w.e.f. 21.12.1986 and monetary benefits were granted w.e.f. 1.4.1988, pending finalization of the service rules. The staff were given revised pay scales of 1986 from 21.12.1986 with monetary benefits from 1.4.1988. I submit that the University has taken decision to extend the pensionary benefits to the employees and the University had issued Proceedings No.760/HE2/92, dated 14.12.1993 stating that the University has adopted the A.P. Revised Pension Rules, 1980 to the staff with retrospective effect. By G.O. Rt.No.562, Health, Medical and Family Welfare (E1) Department, dated 2.2.3.1996 according permission to the University to count 100% service rendered by its staff under private management for the purpose of pensionary benefits."

Though a counter affidavit is filed by the state of Andhra Pradesh, no counter is filed by the University. The counter is silent as to what are the terms and conditions on which the petitioners and others who were absorbed into service.

Subsequently, by an amendment to the Health University Act, by Act 6 of 1987, sub-section (3) was inserted in Section 8 of the Act by which the control and management of all the medical colleges, teaching hospitals etc., (all owned and run by the State) stood transferred and vested in the University. By a statutory declaration, the properties of those colleges, assets and liabilities etcs., stood devolved of the University. Under sub-section 3(c), all officers and employees who were working with any such transferred institution were mandated to work with the university on deputation subject of course to an option to be exercised by such officers or employees either to be absorbed into the service of the university or remain in the government service to which they originally belonged. The section further provided that the terms and conditions of service applicable to such officers who choose to be absorbed into the service of the university shall not be less favourable than those applicable to them before the absorption in all respects. The relevant portion reads as follows :

> "(i) the terms and conditions applicable to such officers and employees consequent on their

absorption in the service of the University shall not be less favourable than those applicable to such employees immediately before such absorption as respects, pay and allowances, leave, pension, gratuity, provident fund and age of superannuation;

(ii) the service rendered by any such officer or employee in the aforesaid institutions and the Directorate of Medical and Health Services prior to their absorption in the service of University shall be deemed to be service under the University and he shall be entitled to count that service for the purpose of increments, leave, pension, provided fund and gratuity;"

As a consequence of the amendment, there were two classes of employees in the university. One class that were absorbed into the service of the university from the service of the State whose service conditions were protected and another class of the employees like the petitioner whose service conditions are not made known to anybody at any rate to this court in the present litigation. Curiously, clause (e) of Section 3 authorises the University to appoint such other officers and employees in addition to the absorbed staff on such terms as may be prescribed from time to time. It is doubtful whether the University could have employed people on service conditions which are different from those applicable to the employees absorbed from the government service. We shall examine this issue later in this judgment.

The matter did not end there. The State of Andhra Pradesh came out with another amendment to the Health University Act in the year 1988 by Act No.1 of 1988. By the Act 1 of 1988, sub-sections (3) and (4) of Section 8 were substituted. The relevant portion of the substituted sub-section 3(8) reads as follows :

"3) with effect on and from the commencement of the University of Health Sciences (Amendment) Act, 1988 :-

a. the control and management of all the Medical Colleges, Teaching Hospitals, Dental Colleges, Nursing Colleges and Nursing Schools in the State, except the Siddhartha Medical College, Vijayawada and the Centre for training and Research in Community Health Sciences, Mangalagiri (hereinafter in this section referred to as "institutions"), shall stand transferred to and

vest in the Government and shall function under the administrative control of the Government, as affiliated colleges of the University;

b. all the properties, assets and liabilities, rights and obligations, in relation to such institutions and all obligations of the University in relation to them shall devolve upon the Government;

c. every officer or employees who immediately before such commencement was working in any such institution shall continue to work in such institution as it's employees not withstanding that he exercised the option to be absorbed in the service of the University;"

As a matter of fact, the amendment was preceded by an Ordinance No.8 of 1987 which was promulgated on 29.9.1987 i.e., within a period of seven months from the date of the Act 6 of 1987, referred to earlier.

Under the scheme of the substituted sub-section (3), once again the management and control of all the medical colleges except Siddhartha Medical College and few other institutions referred to in subsection 3(a) stood transferred and vested in the government. However, insofar as the employees who were working in those various re-transferred institutions were mandated to continue working in such institutions notwithstanding the fact that such officers and employees had already exercised an option to be absorbed into the service of the University obviously under the provisions of the Act 6 of 1987 referred to earlier. The resultant portion appears to be that those employees who exercised their option pursuant to the provisions of Act 6 of 1987 would still continue to be the employees of the University enjoying the protection of service conditions already noticed above, but working in the various institutions owned and run by the government by virtue of the transfer effected under the Act 1 of 1988.

In response to a specific query from the Court, the learned Advocate General made a statement that 176 employees were absorbed by the Health University from Siddhartha Medical College including the petitioner herein. In view of the specific exclusion of Siddhartha Medical College, under Act 1 of 1988, the service conditions of the above mentioned 176 employees remained uncertain.

However, the Government of Andhra Pradesh in G.O.Rt.No.562, dated 22.3.1996, took a decision as follows :

> "2. The Government after examination of the above proposal of the University of Health Sciences hereby accord permission to University of Health Sciences to count 50% of service rendered by the employee of Siddhartha Medical College under private management for the purpose of seniority and 100% service rendered by them under the said private management for the purpose of pensionary benefits subject to payment of pension contribution by the concerned employees at the rates indicated by the Government from time to time."

It appears from the said G.O. that the Executive Council of the University in its meeting dated 29.12.1986 resolved to count 50% service rendered by Siddhartha College staff while it was under the private management for the purposes of seniority, promotion, increments, pension etc., The relevant portion of the G.O. reads as follows :

> "In the letter read above, the Registrar, University of Health Sciences stated that the Siddhartha Medical College, Vijayawada, was taken over by University of Health Sciences on 21.12.1986 and after taken over of the college, the Executive Council of University of Health Sciences in its meeting held on 29.12.1986 have resolved the count 50% service rendered by the staff of the college in the private management for the purposes like seniority, promotion, periodical increments, pension etc., Further, the Registrar has reported that the various employees of the Unions including teaching staff of Siddhartha Medical College, Vijayawada are representing to take over 100% past service rendered by them in the private management of the college for the purpose of monetary benefits. Therefore he has requested the government to consider the request of the employees for taking their 100% service rendered in the private management for allowing monetary benefits as in the case of Rangaraya Medical College, Kakinada and Kakatiya Medical College, Warangal.

Both Rangaraya Medical College, Kakinada and Kakatiya Medical College at Warangal were established and run by two societies known as Medical Education Society, Kakinada and Regional Medical Education Society, Warangal respectively. By Act 17 of 1977 called Rangaraya Medical College (taking over of Management) Act, the management of the said private medical college was taken over by the State. It appears subsequent to such take over of the management, the society passed a resolution on 25.3.1978 transferring all properties belonging to the medical college to the State. Subsequently, by an agreement executed on 26.3.1980, the assets of the college were taken over.

In the case of Kakatiya Medical College also, there was a take over. In the context of the take over of both the above, the question arose as to what should happen to the employees of those two colleges.

In the case of the Ranga Raya Medical College, the government issued G.O.Ms.No.823, dated 31.7.1980 ordering that the employees of the college working as on 30.4.1977 if they did not opt for retrenchment from service shall be treated as government servants with effect from 30.4.1977. It was further directed that such employees shall continue to draw the same pay and allowances as they were drawing before the date of take over until the procedure for absorption into government service and the terms and conditions of such absorption are finalized by the State. Eventually, by G.O.Ms.No.478, Medical and Health (M.2) Department, dated 4.8.1983, the government ordered as follows :

> "3. The Government have examined the above points raised by the employees of Rangaraya Medical College, Kakinada and issue the following clarifications :
>
> Point : 1 :- The Government direct that 50% of the continuous service rendered by the staff under private management be counted for purpose of seniority in the corresponding grades for categories into which they are to absorbed, subject, however, to the fulfillment of the qualifications laid down for the respective posts in Government services.
>
> Point : 2 :- The service rendered by the employees under the Private Management before the take over of the college shall be counted for purpose of pension subject to payment of pension contribution to the Government either by the

institution or by the individual employee concerned at a flat rate of 9.5% of the maximum pay of the post held in the case of non-gazetted officers at the rate of 11.5% of the maximum pay of the post held by the Gazetted Officers. As the employees are governed by contributory provident fund, which comprises the employer's and the employees share, the employer's share will be adjusted towards the pension contribution and to extent pension contribution so adjusted falls short of the pension contribution payable as worked out at the rates mentioned above, the employee should make good this deficit before his service under the private management is counted for the purpose of pension. The excess of employer's share in the C.P.F. remaining after adjustment of the pension contribution due, if any, will lapse to Government.

Point : 3 :- Necessary orders have already been issued in G.O.Ms.No.690, Medical and Health, Dated 15.09.1982.

Point : 4 :- The Government order that the class IV employees also can contribute to the C.P.F. There is no provision in the GPF rules to return the contribution made by the employee to the CPF before retirement. Therefore, the balance on CPF Accounts representing the employee's share together with interest thereon cannot be refunded but it will form the opening balance of the GPF account to be opened in Government after absorption.

This order issues with the concurrence of Fiancne and Planning Department vide their U.O.No.221660/318/Pension/83-1, dated 20.6.1983."

Similar orders were issued in the case of Kakatiya Medical College in G.O.Ms.No.721, Medical and Health (B.1) Department, dated 16.6.1980. Dealing with the aspect of pension, the order is as follows :

"(3) <u>Retirement benefits for counting total service :-</u> The service rendered by the Employees under the private management before the take over of the college shall be counted for purposes of pension subject to payment of pension contribution to the Government either by the Institution or by the

> individual employee concerned at a flat rate of 9.5% of the maximum pay of the held in the case of Non-Gazetted Officers and at the rate of Rs.11.5% of the maximum pay of the post held by the GAzetted Officers. As the employees are governed by contributory provident fund, which comprises the employer's and the employees' share, the employees' share will be adjusted towards the pension contribution and to the extent of pension contribution worked out at the rates mentioned above falls short, the employee should make it good before his service under the private management is counted for the purpose of pension."

The employment under the Health University Act is governed under Section 53 of the said Act which stipulates that every employee shall be appointed under a written contract. Section 56 of the Act authorizes the University to constitute such schemes of pension, provident fund which reads as follows :

> "56) 1) The University shall, constitute for the benefit of its employees in such manner and subject to such conditions as may be prescribed by the Statutes, such schemes of pension, provident fund and insurance as it may deem fit with the prior approval of the Government.
>
> (2) Where such provident or pension fund has been so constituted, the Government may declare that the provisions of the Provident Funds Act, Act 9 of 1925 shall apply to such funds as if it were a 1925 Government Provident Fund."

Though it is exclusively within the power of the University to decide the service conditions of its employees by virtue of Section 53, though Section 56 authorises the University to constitute such schemes as regards pension etc., as deemed fit and notwithstanding the decision of the University in its resolution dated 13.12.1986 which was communicated to the private management through the Special Officer by his letter dated 3.1.1987 that the employees working in Siddhartha Medical College while it was under the private management would be absorbed into the service of the University and 50% of their service prior to the absorption would be counted for various purposes like seniority, promotion, pension etc., as it was done in the case

of Rangaraya and Kakatiya Medical Colleges, though the University admittedly passed a resolution dated 29.12.1986 to take into account 50% of the service rendered by such absorbed staff prior to their absorption to the University service, though such a decision of the University was approved by the state in G.O.Rt.No.562, referred to earlier, we are informed the University did not frame any rules or regulations dealing with the service conditions of such absorbed employees of the erstwhile Siddhartha Academy.

The deceased petitioner was virtually driven from pillar to post when he claimed payment of pension after his retirement. Not able to secure payment of any pension on his retirement on 31.10.2000, he filed a Writ Petition No.1288 of 2001. In the said writ petition, he prayed as follows :

> "Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the action of the respondents in not sanctioning and paying the retirement benefits to the petitioner as wholly arbitrary, illegal and consequently direct the respondents to sanction any pay retirement benefits like pension and gratuity to the petitioner."

It appears from the order passed in the writ petition that it was represented before this Court by the respondents i.e., both the University and the State of Andhra Pradesh that that in view of the orders passed in G.O.Ms.No.507 and the Act 15 of 2001, the petitioner ought to approach the Andhra Pradesh Administrative Tribunal, but not the High Court. Recording the same, a learned Judge of this Court pleased to dismiss the writ petition by a short order which reads as follows :

> "The Government has issued orders in G.O.Ms.No.507, Health, Medical and Family Welfare Department, dated 22.12.2000 delinking all the constituent institutions from the purview of the University and brought them under the control of the Director, Medical Education, Andhra Pradesh, Hyderabad. Subsequently, the said G.O. was culminated into an Act 15 of 2001.
>
> In view of the same the petitioner has to approach A.P. Administrative Tribunal as a first forum.
>
> The Writ Petition is dismissed directing the

petitioner to approach the appropriate tribunal as stated above."

G.O.Ms.No.507 referred to in the judgment is dated 22.12.2000 issued by Health, Medical and Family Welfare Department. The relevant portion of the G.O. is as follows :

"5. The Government after careful examination of the matter have decided to delink the following institutions from the purview of the NTR University of Health Sciences, Vijayawada and bring the same under the fold of Director of Medical Education, Hyderabad so as to enable the University of Health Sciences, Vijayawada to concentrate completely on academic activities.

1. Siddhartha Medical College, Vijayawada with attached Hospitals, viz.,

a. University General Hospital, Vijayawada

b. University General Hospital, Mangalagiri.

c. Mangalagiri Hospital, Mangalagiri.

d. Rural Health Centre, Nimmakuru.

e. S.V.A.K.M.Hospital, Vuyyuru

f. Yarlagadda Venkanna Chowdary Oncology Wing and Research Centre, Chinakakani, Guntur District.

1. University Dentral College and Hospital, Vijayawada

2. School of Nursing, Mangalagiri.

6. Accordingly, Government hereby order that the above Institutions be delinked from the purview of NTR University of Health Sciences, Vijayawada and brought under the control of Director of Medical Education, Hyderabad.

7. xxxxx

> 8. All the regular employees of NTR University of Health Sciences, Vijayawada working in the above institutions numbering 255 temporary employees 51 shall continue to be on deputation with the Medical College/Dental College, General Hospital and other allied institutions. Any retirement vacancy either with the NTR University of Health Sciences, Vijayawada or Government shall not be filled up except technical posts like doctors and para-medical staff.
>
> 9 . The Registrar, NTR University of Health Sciences, Vijayawada and Director of Medical Education, Hyderabad are directed to take immediate necessary action accordingly. The actual date of delinking of the institutions under the fold of Director of Medical Education, Hyderabad may be informed to the Government."

It is worthwhile mentioning that the said G.O. was issued some 52 days after the retirement of the petitioner. We must state that we fail to understand what is meant by "delinking" referred to in the said G.O. On a reading of the clauses extracted above, we must express our inability to understand as to what is the effect of the said G.O. on the service conditions of the employees like the petitioner herein who are absorbed by the University from Siddhartha Medical College. Whether we are to understand that the employees are absorbed into government service, if so how are their cases treated for the purpose of seniority, promotion, pension etc., are matters for speculation by the standards of the Administrative Law with which we are acquainted. At any rate, the G.O. has no application to the petitioner as it was issued subsequent to his factual retirement. We say `factual' because that is also an area which requires an examination as to how the petitioner retired from the service, either by termination of contract or by operation of some law – a question which we will examine later.

Within four months of the issuance of the abovementioned G.O., the State of Andhra Pradesh came out with a further amendment to the Health University act, by Act No.15 of 2001. One salient feature of the Act is that though it received the assent of the Governor on 20th April 2001 and published in the Gazette on 21st April, 2001 by virtue of a legal fiction under Section 1(2), the Act was given retrospective effect from 22nd December, 2000. The substance of the Act is that that part of Section 3(a) introduced by Act No.1 of 1988 by which Siddhartha Medical College and other

institutions enumerated therein were excluded from the general purview of the operation of the provisions of Act 1 of 1988 is now omitted. Thus in substance with effect from 22nd December, 2000, Siddhartha Medical College and other institutions also stood transferred and vested in the government. A new sub-section (4) to Section 8 came to be inserted. Under Clause (b) of the newly inserted sub-section (4), all the obligations of the University in relation to those enumerated institutions in sub-section 4(a) devolved upon the government.§ Further under Clause (c), it is stipulated that every officer or employee who immediately prior to the commencement of the Act were working in any one of the institutions specified in clause 4(a) were directed to continue to work on deputation with such institution. Clause (c) reads as follows :

> "(c) every regular officer or employee who immediately prior to such commencement was working in any of the institutions as specified in clause (a) shall continue to work on deputation as its employee till absorption;"

The last paragraph of the clause `till absorption by necessary implication' leads us to a conclusion that such employees would be absorbed into government service. Under proviso to clause (b), it is stipulated as follows :

> "Provided that the services rendered by any such officer or employee in the University prior to such commencement shall be deemed to be service under the Government and he/she shall be entitled to count that service for the purpose of increments, promotion, leave, pension, provident fund and gratuity."

an additional factor reinforcing the above implication drawn by us. None the less, the application of this act to the petitioner is a matter which requires examination as under clause (c) extracted above, the absorption is available to only those who are working in any one of the enumerated institutions "immediately prior to" the commencement of the Amendment Act. At any rate, the respondents took a stand in W.P.No.1288 of 2001 that the enactment applied to the petitioner and therefore he should approach the Andhra Pradesh Administrative Tribunal for the resolution of

his grievances.

The petitioner then approached the Andhra Pradesh Administrative Tribunal by O.A.No.7769 of 2001. The Tribunal by an order dated 12.11.2001 disposed of the said O.A. The relevant portion of the order reads as follows :

> "The University of Health Sciences has taken a decision to extend the pensionary benefits to the employees and accordingly the University has issued proceedings No.760/HE.2/92, dated 14.10.1993 stating that the University has adopted the A.P.Revised Pension Rules, 1980, to the staff with retrospective effect. Later Government has issued G.O.Rt.No.562, Health, Medical and Family Welfare (E1) Department, dated 22.3.1996 according permission to the University to count 100% service rendered by the staff under private management for the purpose of pensionary benefits.
>
> While the matter stood thus, the applicant retired from service on 31.10.2000. The applicant submitted a representation on 2.3.2000 to the Registrar for sanction of pensionary benefits and the same was forwarded, but no action has been taken on the ground that the University of Health Sciences Pension Rules are still pending for the approval of the Government. It is contended by the learned counsel for the applicant that even though the applicant retired from service on 31.10.2000 and submitted his application for payment of pension, on the ground that the University of Health Science rules are still pending for the approval of the Government, the pensionary benefits are not given to the applicant and, therefore, an appropriate direction be issued.
>
> The learned G.P. has contended that in spite of correspondence, he could not get instructions and he seeks some time to file counter in the matter.
>
> In the facts and circumstances of the case and submissions made and as the applicant retired from service on 31.10.2000 and as the applicant's pensionary benefits have not been extended on the ground that the University of Health Sciences pension rules are under consideration of the government, we direct the 1st respondent to finalise the rules of University of Health Sciences within a period of 3 months from the date of receipt of this order and depending upon the rules, the claim of the applicant be examined and

appropriate orders be passed."

We are distressed to see that the University conveniently took a stand that though it passed a resolution and issued proceedings dated 14.10.1993 to the effect that the University has adopted the Andhra Pradesh Revised Pension Rules, 1980, the University was still awaiting the approval of the State of its decision.

The problems of the petitioner did not come to an end. In spite of the direction by the Tribunal extracted above, no decision was taken by either the State or the University within a period of three months stipulated by the Tribunal in its order. The petitioner was compelled to move the Tribunal by way of Contempt Application No.506 of 2002 which came to be closed by order dated 1.9.2003 with a euphemistic expression for dismissal by a short orders, the relevant portion reads as follows :

> "(2) The Government through Memo bearing No.444/E1/2003-3, Health, Medical and Family Welfare (E1) Department, dated 26.4.2003 passed speaking orders stating that the applicant retired from service well before the orders issued by the NTR University of Health Sciences (Amendment) Act, 2001 and in the facts and circumstances of the case, the applicant is not eligible for any retirement benefits.
>
> (3) In view of the said Memo of the Government, the orders of the Tribunal in O.A.No.7769/2001 are complied with. The C.A. is, therefore, closed."

Memo No.444/E1/2003-3, dated 26.4.2003 relied upon by the Tribunal is filed in the material papers with the CC No.501 of 2005 herein. While the direction of the Tribunal in O.A.No.7769 of 2001 was to the government to finalise the rules of the University of Health Sciences which were reported to have been pending approval before the State, the government in the above mentioned Memo virtually sat on adjudicating the legality of the claim of the petitioner for retirement benefits. The substance of the Memo is since the petitioner retired from the service before the commencement of the Amendment Act 15 OF 2001, he was not eligible for any retirement benefits. Apart from the arrogation of power to adjudicate the claim of the petitioner, the content of the above memo does not in any way constitute compliance with the directions issued by the Tribunal in O.A.No.7769 of 2001. We are shocked to see that the conscience of the Tribunal was not even pricked by such an exercise

of the power. It is distressing to note the language of the Memo. The Tribunal, however, in its wisdom thought that the orders of the Tribunal were complied with. The relevant portion of the Memo at para 3(v), reads as follows:

> "… Further the Hon'ble Tribunal have passed orders on 12.11.2001 at the admission stage itself and also disposed off the above O.A., without giving any opportunity to the respondents at any point of time…"

Obviously it is a false statement because; the order of the Tribunal in O.A.No.7769 of 2001 clearly indicates that the respondent No.1 at least was represented by the Government Pleader. Thereafter, the petitioner approached this Court by way of the present writ petition. A Division Bench of this Court by an order dated 5.1.2004 granted interim direction in WPMP No.32993 of 2003 directing the respondents to pay the petitioner's pension from 31.10.2000 upto date and continue to pay month to month pending the present writ petition. Complaining that the said interim order is not complied with, Contempt Case No.501 of 2004 is filed.

Sri Jogayya Sarma, learned counsel for the petitioner argued that the University having passed a resolution at the time of the take over of the Siddhartha Medical College that the staff of the said college would be absorbed into the service of the University, that 50% of the service rendered prior to the absorption would be counted for various purposes like seniority, promotion, increments, pension etc., following the precedent of Rangaraya Medical College and Kakatiya Medical College when they were taken over by the government and having passed a further resolution dated 14.10.1993 to adopt the A.P.Revised Pension Rules, 1980 insofar as the absorbed employees are concerned, which was communicated to the government and the government having accorded permission to the University to count 50% of the service rendered by the employees of the Siddhartha Medical College and private management for the purpose of seniority and 100% service rendered by them for the purpose of pensionary benefits in G.O.Rt.No.562, dated 22.3.1996, referred to earlier cannot now be permitted to plead that the University has not framed any scheme or provision for payment of pension to the petitioner.

The learned Government Pleader appearing for the State argued that in view the Act No.15 of 2001 by which the State absorbed the service of the employees of the

Health University into the service of the State with effect from 22nd December, 2000, the petitioner who retired from the service of the Health University cannot claim any relief against the State.

The learned counsel for the University, however, submitted that the University is till awaiting the approval of the government for its decision to extend the A.P.Revised Pension Rules, 1980 to its employees.

We accept the submission made by the learned counsel for the petitioner. In view of the resolution of the University dated 14.10.1993 adopting the A.P.Revised Pension Rules, 1980 and in view of G.O.Rt.No.562, dated 22.3.1996, the resolution of the University had the prior approval of the State Government as required under Section 56(1) of the Health University Act and therefore the University is bound to pay pensionary benefits to the petitioner in accordance with the provisions of the A.P.Revised Pension Rules, 1980 taking into account 100% of the service rendered by the petitioner both under the private management and subsequently in the service of the Health University.

In this context we cannot but refer to a statement of law made by Justice Frankfurter i n **Vitarelli v. Seaton** quoted with approval by the Supreme Court in **Ramana Dayaram Shetty v. The International Airport Authority of India** at para 10 which read as follows :

> "An executive agency must be rigorously held to the standards by which it professes its action to be judged …. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. …. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

Though it may not be really necessary for us for the purpose of the present judgment to decide as to how the petitioner retired from service, we may point out incidentally to demonstrate the utter confusion and lawlessness insofar as the service conditions of the petitioner and other employees absorbed from Siddhartha Medical College,

we wish to only point out that neither the learned Government Pleader appearing for the State nor the learned Standing Counsel appearing for the University could point out any regulation of the University fixing the age of superannuation. In the absence of any such regulation, the petitioner's service could be brought to an end only by the termination of the contract. As already pointed out, we do not wish to elaborate on this question as it would be unnecessary for the present purpose except to highlight the indifference of both the University and the State dealing with the issue.

We therefore deem it appropriate to allow the writ petition, but, in the circumstances indicated above with exemplary costs quantifying to Rs.25,000/- (Rupees Twenty five thousand only).

In view of the conclusion reached by us in the writ petition, Contempt Case is adjourned by four weeks to enable the respondent University to comply with the orders of this Court.

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knk 23.12.2005